

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	No. 19-CR-10080
)	
ELIZABETH HENRIQUEZ,)	
Defendant.)	EXPEDITED RULING REQUESTED
)	
)	

EMERGENCY MOTION PURSUANT TO 18 U.S.C. § 3582
DUE TO A COVID-19 OUTBREAK AT FCI DUBLIN

Due to a COVID-19 outbreak at FCI Dublin, Elizabeth Henriquez respectfully requests this Court for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Elizabeth has served nearly six months of her seven-month term of imprisonment. She is scheduled to be released from prison to home confinement in a little over two weeks, on January 7, 2021. We respectfully ask the Court, however, to reduce Elizabeth's sentence to time served so that she may be released to the safety of home confinement immediately.¹ We respectfully request that the Court issue such an order on an expedited, emergency basis due to the extraordinary COVID-19 circumstances that precipitate this motion.

There is presently a COVID-19 outbreak at FCI Dublin, where Elizabeth is incarcerated. The outbreak is one of the worst in the entire federal prison system. As of Monday, 106 inmates were actively infected. As of Tuesday, that number nearly doubled to 188 inmates. The facility

¹ The Court can reduce Elizabeth's sentence to time served and impose as a condition of supervised release home confinement through January 27, 2020, which otherwise would be the date on which her seven-month term of imprisonment would end.

is, simply put, a COVID-19 tinderbox. Undersigned counsel had feared exactly this situation, and that fear is now a reality.

Although undersigned counsel's understanding is that, at least as of Tuesday afternoon, none of the infected inmates are housed in the adjacent minimum security camp building where Elizabeth is resident, it is only a matter of time before the virus makes its way into the camp population (if it has not already). Among other things, undersigned counsel's understanding is that guards and other BOP staff regularly move between the prison building and the camp building; these individuals serve as convenient, unwitting pathways for the virus to travel from one building to the other. Addressing a similar situation involving FMC Devens, Judge Wolf concluded that it was simply "good luck"—luck that probably "would not continue"—that a COVID-19 outbreak at the FMC Devens medical facility had not yet spread to the FCM Devens prison camp. *United States v. Pena*, 463 F. Supp. 3d 118, 122 (D. Mass. 2020) (granting compassionate release to the defendant, reducing his sentence to time served so that he could be immediately transferred from FMC Devens to the safety of his home). Judge Wolf granted compassionate release to the defendant in that case, reducing his sentence to time served and imposing a period of home confinement as a condition of his supervised release. *Id.* at 128. That is the exact relief we are asking for here.

Undersigned counsel contacted Assistant United States Attorneys Steve Frank and Kristen Kearney to inform them of the COVID-19 outbreak at FCI Dublin and to request their assent to this motion. Undersigned counsel expressed to Mr. Frank and Ms. Kearney his substantial concern that Elizabeth could die if she contracts COVID-19. Mr. Frank and Ms. Kearney are aware of the reasons why Elizabeth is especially vulnerable to a catastrophic outcome should she contract COVID-19. We have addressed that medical issue in prior submissions to the Court, including by

providing the Court with a letter from Elizabeth's primary care physician regarding her physical health conditions. The Court is familiar with those prior submissions, so we will not repeat them here.

Mr. Frank and Ms. Kearney nevertheless informed undersigned counsel that the government refuses to assent to the motion. The government's position is that the Court should not issue an order allowing Elizabeth to be released to the safety of her home *two weeks earlier* than she otherwise would, notwithstanding that every additional day Elizabeth spends at Dublin between now and January 7, 2021 places her life in jeopardy. The government's position, in other words, is that Elizabeth's physical health—and potentially her life—should simply be left to chance for the next two weeks. The government is either ambivalent about Elizabeth's health or naïve about the probability that the COVID-19 outbreak at FCI Dublin will spread from the prison building to the adjacent camp.

Undersigned counsel does not believe Elizabeth's physical health and life should be left to chance, when COVID-19 is spreading like wildfire at FCI Dublin and Elizabeth has already served almost her entire term of imprisonment.² We respectfully request that the Court reduce Elizabeth's sentence to time served so that she may be released immediately to the safety of her home.³

² Undersigned counsel understands that Douglas Hodge is scheduled to be released from prison within the next few days, after serving roughly 60% of his prison sentence. Mr. Hodge has received the benefit of early release because he qualified for a BOP program for offenders older than 60 years of age. Even if the Court issues an order allowing Elizabeth to be released to home confinement two weeks earlier than scheduled, Elizabeth will have spent more time in prison than any Varsity Blues parent sentenced to date.

³ Undersigned counsel will arrange to have Elizabeth transported from FCI Dublin to her home (which is approximately an hour away) in a way that avoids any public contact. Elizabeth will abide by strict quarantine conditions while in home confinement.

DATED: December 23, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Aaron M. Katz, hereby certify that the foregoing document was served through the ECF system on all registered participants in this action on December 23, 2020.

/s/ Aaron M. Katz
Aaron M. Katz

LOCAL RULE 7.2 CERTIFICATION

I, Aaron M. Katz, hereby certify that I conferred with the government regarding this motion, and the government opposes it.

/s/ Aaron M. Katz
Aaron M. Katz